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**HOUSE BILL 2121**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Representatives Young and Klippert

AN ACT Relating to abortion; amending RCW 9.02.110, 9.02.120, 9.02.130, 9.02.140, and 9.02.170; adding a new section to chapter 9.02 RCW; repealing RCW 9.02.100; prescribing penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 9.02.110 and 1992 c 1 s 2 are each amended to read as follows:

(1) The state may not deny or interfere with a woman's right to choose to have an abortion prior to ((~~viability of the fetus, or to protect her life or health~~)) 15 weeks of gestational age or prior to the fetal heartbeat being detected, or in case of a medical emergency or severe fetal abnormality.

((~~A~~)) (2) Except in a medical emergency or in the case of a severe fetal abnormality, a physician may not terminate and a health care provider may not assist a physician in terminating a pregnancy ((~~as permitted by this section~~)) if the probable gestational age of the unborn human being has been determined to be greater than 15 weeks or if a fetal heartbeat has been detected.

(3) No person may perform an abortion except as authorized in this section.

**Sec.**  RCW 9.02.120 and 1992 c 1 s 3 are each amended to read as follows:

((~~Unless authorized by RCW 9.02.110, any~~)) (1) Any person who performs an abortion on another person in violation of this chapter shall be guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Any health care practitioner licensed under Title 18 RCW who violates this chapter commits an act of unprofessional conduct and his or her license shall be suspended by the appropriate disciplining authority pursuant to chapter 18.130 RCW.

(3) A physician who knowingly or intentionally delivers to the department of health any report required by RCW 9.02.130 that is known by the physician to be false is subject to a civil penalty of up to $500 per violation imposed by the department of health.

(4) The attorney general has the authority to bring an action in law or equity to enforce the provisions of this chapter on behalf of any disciplining authority as defined in chapter 18.130 RCW. The disciplining authorities also have the authority to bring such an action on their own.

**Sec.**  RCW 9.02.130 and 1992 c 1 s 4 are each amended to read as follows:

(1) Except in a medical emergency or in the case of a severe fetal abnormality, prior to performing an abortion as authorized in RCW 9.02.110, the physician or the referring physician shall first:

(a) Make a determination of the probable gestational age of the unborn human being and document that gestational age;

(b) Make a determination of whether the unborn human being has a detectable fetal heartbeat; and

(c) Document in the maternal patient's chart:

(i) The probable gestational age of the unborn human being; and

(ii) Whether a fetal heartbeat has been detected.

(2) Whenever a physician performs an abortion on an unborn human being whose gestational age is greater than 15 weeks or whose fetal heartbeat is detected, the physician shall cause to be filed with the department of health, on a form supplied by the department, a report.

(a) The report shall contain the following:

(i) The date of the abortion;

(ii) The specific method of abortion used;

(iii) The probable gestational age of the unborn human being and the method used to calculate the gestational age;

(iv) Whether a fetal heartbeat was detected and the method used to determine whether the unborn human being had a detectable fetal heartbeat;

(v) A statement declaring that the abortion was necessary to preserve the life or physical health of the maternal patient;

(vi) Specific medical indications supporting the abortion; and

(vii) Probable health consequences of the abortion and specific abortion method used.

(b) The report may not contain the name of the maternal patient upon whom the abortion was performed or any other information or identifiers that would make it possible to identify, in any manner or any circumstances, a woman who sought to obtain an abortion.

(c) The department of health shall, within 30 days of the effective date of this section, create the forms required by this section. This subsection (2) does not apply until at least 10 days after the requisite forms have been made available.

(3) The good faith judgment of a physician as to ((~~viability of the fetus or as to the risk to life or health of a woman~~)) the gestational age of the unborn human being, the presence of a fetal heartbeat, or the presence of a medical emergency or severe fetal abnormality and the good faith judgment of a health care provider as to the duration of pregnancy ((~~shall be~~)) is not a defense in any proceeding in which a violation of this chapter is an issue, unless all of the requirements of this section have been met.

(4) Determinations of gestational age under this section must be made according to standard medical practices and techniques used in the community. Determinations of fetal heartbeat must be made using a test that is consistent with the physician's good faith and reasonable understanding of standard medical practice and appropriate for the estimated gestational age of the unborn human being and the condition of the maternal patient and her pregnancy.

**Sec.**  RCW 9.02.140 and 1992 c 1 s 5 are each amended to read as follows:

Any regulation promulgated by the state relating to abortion shall be valid only if((~~:~~

~~(1) The regulation is medically necessary to protect the life or health of the woman terminating her pregnancy,~~

~~(2) The regulation is consistent with established medical practice, and~~

~~(3) Of the available alternatives, the regulation imposes the least restrictions on the woman's right to have an abortion as defined by RCW 9.02.100 through 9.02.170 and 9.02.900 through 9.02.902~~)) consistent with the requirements of this chapter.

**Sec.**  RCW 9.02.170 and 1992 c 1 s 8 are each amended to read as follows:

For purposes of this chapter:

(1) ((~~"Viability" means the point in the pregnancy when, in the judgment of the physician on the particular facts of the case before such physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.~~

~~(2)~~)) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2) "Gestational age" or "probable gestational age" means the age of an unborn human being as calculated from the first day of the last menstrual period of the pregnant woman.

(3) "Human being" means an individual member of the species *homo sapiens*, from and after the point of conception.

(4) "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of lifesaving medical treatment, is incompatible with life outside the womb.

(5) "Medical emergency" means a condition in which, on the basis of a physician's good faith clinical judgment, an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition arising from the pregnancy itself, or when the continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function.

(6) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Abortion" means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

((~~(3)~~)) (8) "Pregnancy" means the reproductive process beginning with the implantation of an embryo.

((~~(4)~~)) (9) "Physician" means a physician licensed to practice under chapter 18.57 or 18.71 RCW in the state of Washington.

((~~(5)~~)) (10) "Health care provider" means a physician or a person acting under the general direction of a physician.

((~~(6)~~)) (11) "State" means the state of Washington and counties, cities, towns, municipal corporations, and quasi-municipal corporations in the state of Washington.

((~~(7)~~)) (12) "Private medical facility" means any medical facility that is not owned or operated by the state.

NEW SECTION. **Sec.**  A new section is added to chapter 9.02 RCW to read as follows:

Nothing in this chapter shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intent of this chapter to make lawful an abortion that is otherwise unlawful. An abortion that complies with this chapter, but violates any other state law, is unlawful. An abortion that complies with another state law, but violates this section, is unlawful.

NEW SECTION. **Sec.**  RCW 9.02.100 (Reproductive privacy—Public policy) and 1992 c 1 s 1 are each repealed.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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